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EXAMINER				
KANG, INSUN				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/730,897

**Applicant(s)**

MARON, JONATHAN

**Examiner**

INSUN KANG

**Art Unit**

2193

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. This action is responding to the amendment filed on 12/5/2008.
2. Claims 1-44 are pending in the application.

***Drawings***

3. The amended drawings filed on 12/5/2008 are accepted. Therefore, the objection to the drawings is withdrawn.

***Claim Rejections - 35 USC § 101***

4. The rejection to claims 23-44 are withdrawn due to amendment to the claims and specification.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 34-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Per claim 34, in line 5 and 6, it is unclear to which "computer program instructions" they are referring as "computer program instructions" is introduced in line 3. Interpretation: the computer program instructions (in line 3).

Per claim 34, the claim is directed to an application tuning tool that is a mere software tool according to the specification, however, the claim can be read as the application tuning tool comprises a processor, a memory, and computer program instructions stored in the memory. Therefore, it is unclear how software can include a processor and memory. Interpretation: "An

application tuning tool...computer system, the tool embodied on a computer system comprising a processor...when executed implement the application tuning tool comprising an interface...parameter values.”

Per claims 35-44, these claims are rejected based on dependency on the rejected parent claim 34.

### ***Specification***

7. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The term, “computer readable storage medium” in claims 23 is not defined in the specification. The amended specification filed on 12/5/2008 recites computer readable media including “recordable-type media (page 29 lines 1-5).” The scope and meaning of “recordable” and “storage” are different as a recordable medium only holds information while a storage medium may hold information, process information or both. Storage media processing information may either access a recording medium or a permanent component to store and retrieve information.

8. The meaning of every term used in any of the claims should be apparent from the descriptive portion of the specification with clear disclosure as to its import. The claim or claims must conform to the invention as set forth in the remainder of the specification and the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description. See MPEP § 2111.01 and § 2173.05(a), 608.01(o) [R-3], 608.01(i), 1302.01, and 37 CFR 1.75 and 1.58(a). The appropriate term that is supported in the disclosure needs to be used in the claims.

### ***Double Patenting***

9. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

10. Claims 1-44 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-28 of copending Application No.10/730901 hereafter '901 in view of King et al. (US 6,252,592) hereafter King.

The following example is given:

Per claim 1:

'901 claims:

-A method of tuning an application deployed in an application server (A method of tuning an application deployed in an application server, claim 1)

-deploying the application in the application server ("deploying the application in the application server," claim 1)

-invoking an application tuning tool to display an interface including displays of current values of application parameters and measurements of performance of the application ("invoking an application tuning server-side component operable to retrieve information

relating to parameters of the deployed application that are to be tuned current values of parameters of the deployed application that are to be tuned and measurements of performance of the application... with the parameter from a display,” claim 1)

‘901 does not explicitly recite that the interface displays emphasize importance of a particular parameter over another parameter as recited in the instant claim 1. However, King teaches such an interface using visual elements such as a tab was known in the pertinent art, at the time applicant's invention was made, to provide a specific order of access (i.e. col. 2 lines 23-40).” It would have been obvious for one having ordinary skill in the art to modify the instant claim to incorporate the teachings of King. The modification would be obvious because one having ordinary skill in the art would be motivated to define the sequence of visual elements in the instant claim by using tabbing order so that the user can quickly navigate among the visual elements in a specific order (i.e. col. 2 lines 23-40).

‘901 further claims:

-receiving specifications of values of application tuning parameters; and tuning the deployed application using the received specified parameter values (“receiving specifications of values of application tuning parameters and tuning the deployed application using the received specified parameter values by modifying the values...application,” claim 1).

The instant claim does not explicitly recite displaying an effect of the modification of the value of the parameters of the deployed application on system and application... parameter in real time as recited in ‘901 claim 1. However, it would have been obvious for one of ordinary skill in the art of program development at the time the instant invention was made to

modify the '901 method by omitting the step of displaying a measurement...application performance in real time as recited in '901 claim 1 for the purpose of expediting the method.

This is a provisional obviousness-type double patenting rejection.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-4, 7-9, 12-15, 18-20, 23-26, 29-31, 34-37, and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumarot et al. (US patent. RE38865) hereafter "Dumarot" in view of King et al. (US 6,252,592) hereafter King.

Per claim 1:

Dumarot discloses:

-tuning an application deployed in an application server (i.e. "*adjust system or application parameters in order to optimize the operation of the application*," col. 7, lines 1-25; col. 6 lines 20-26; "an optimization process 300 that the *local computer 12 or server 130 uses to optimize software applications 138* and system response or utilization, or to provide recommendations 480... the optimizer 136 gathers relevant system information including: operating system 150 version and release data, installed hardware components, hardware configuration, and software configurations (col. 5, lines 34-41);

-deploying the application in the application server; (i.e. “*program application performance on a computer system ... configuration information and performance capabilities based on characteristics of the program/system ... the configuration information and the performance capabilities are used to optimize configuration parameters of the program applications so as to enhance the performance of the workstation in running the program system,*” col. 3 lines 40-52)

-invoking an application tuning tool to display an interface including displays of current values of application parameters and measurements of performance of the application (i.e. “The optimization database table ...the *optimizer program*...on the local computer and/or the remote computer. The optimizer program *contains or accesses* a dynamic monitor 137 of system and application activity...*particular settings of the application* that may affect application performance,” col. 4, lines 43-59; “the optimizer 136 gathers relevant system information...the optimizer may query the current CPU use, memory use, or other activity,” col. 5, lines 37-59; the optimizer may query the current CPU use, memory use, or other activity,” col. 5, lines 56-59; “control various parameters 420, associated with a particular application name,” col. 5 lines 41-55).

Dumarot does not explicitly teach that the interface displays emphasize importance of a particular parameter over another parameter. However, King teaches such an interface using visual elements such as a tab was known in the pertinent art, at the time applicant's invention was made, to provide a specific order of access (i.e. col. 2 lines 23-40).” It would have been obvious for one having ordinary skill in the art to modify Dumarot’s disclosed system to incorporate the teachings of King. The modification would be obvious because one having ordinary skill in the



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art would be motivated to define the sequence of visual elements in Dumarot by using tabbing order so that the user can quickly navigate among the visual elements in a specific order (i.e. col. 2 lines 23-40).

Dumarot further discloses:

-receiving specifications of values of application tuning parameters (i.e. “The *optimizer program* 136 may contain a graphical user interface 139, used to *specify settings or provide information to the user.* (col. 4, lines 55-58)

-and tuning the deployed application using the received specified parameter values (i.e. “the optimizer ... can *adjust the following parameter settings* ... to adjust performance,” col. 6 lines 9-26)

Per claim 2:

Dumarot further discloses:

-wherein the step of invoking the application tuning tool is performed in response to an action by an administrator, engineer, or user of the application server (i.e. “user-specified preferences,” col. 3, lines 15-20; the user may enter text or data ... that specifies a level of optimization ... application settings,” col. 6 lines 9-20).

Per claim 3:

Dumarot discloses displaying current values of application parameters and measurements of performance of the application (i.e. col. 4, lines 43-59; “the optimizer 136 gathers relevant system information...the optimizer may query the current CPU use, memory use, or other

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activity,” col. 5, lines 37-59; the optimizer may query the current CPU use, memory use, or other activity,” col. 5, lines 56-59; “control various parameters 420, associated with a particular application name,” col. 5 lines 41-55). Dumarot does not explicitly teach that the interface has two portions to display the current values of application parameters and to display the measurements of performance of the application. However, King teaches that storing visual elements by using tabs (i.e. col. 2 lines 23-40) was known in the pertinent art, at the time applicant's invention was made, to provide a specific order of access (i.e. col. 2 lines 23-40).” It would have been obvious for one having ordinary skill in the art to modify Dumarot's disclosed system to incorporate the teachings of King. The modification would be obvious because one having ordinary skill in the art would be motivated to define the sequence of visual elements including current values of application parameters and measurements of performance of the application by using separate tabs so that the user can quickly navigate among the displayed elements in a specific order (i.e. col. 2 lines 23-40).

Per claim 4:

Dumarot further discloses:

-wherein the application tuning server-side component is operable to accept input from the administrator, engineer, or user to specify values of the parameters of the deployed application that are to be tuned (i.e. “user-specified preferences,” col. 3, lines 15-20; the user may enter text or data ... that specifies a level of optimization ... application settings,” col. 6 lines 9-20).

Per claim 7:

King further discloses:

-the interface comprises: a plurality of tabs, each tab operable to display information each tab operable to display information relating to a type of parameters represented by the tab (i.e. col. 2 lines 23-40).

Per claim 8:

King further discloses:

-the interface further comprises: a first portion operable to display the current values of application parameters represented by a selected tab; and a second portion operable to display the measurements of performance of the application (i.e. col. 2 lines 23-40).

Per claim 9:

Dumarot further discloses:

- the first portion operable to display the current values of application parameters represented by a selected tab is further operable to accept input from the administrator, engineer, or user to specify values of the application parameters. (i.e. "user-specified preferences," col. 3, lines 15-20; the user may enter text or data ... that specifies a level of optimization ...application settings," col. 6 lines 9-20).

Per claims 12-15 and 18-20, they are the system versions of claims 1-4 and 7-9 respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-4 and 7-9 above.

Per claims 23-26 and 29-31, they are the product versions of claims 1-4 and 7-9, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-4 and 7-9 above.

Per claims 34-37 and 40-42, they are the tool versions of claims 1-4 and 7-9 respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 1-4 and 7-9 above.

13. Claims 5, 6, 10, 11, 16, 17, 21, 22, 27, 28, 32, 33, 38, 39, 43, and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumarot et al. (US patent. RE38865) hereafter "Dumarot," in view of King et al. (US 6,252,592) hereafter King, and further in view of Applicant's Admitted Prior Art (hereinafter referred to as "APA") disclosed in the instant application.

Per claim 5:

Dumarot discloses adjusting application parameters for optimal performance (i.e. col. 7, lines 1-25; col. 6 lines 20-26) but Dumarot and King do not explicitly teach that the values of application parameters comprise at least one of: Database Connection Pool size, Thread Pool Size, HTTP connection pool size, HTTP incoming connection queue length, HTTP Socket timeout, Session pool size, and Java Virtual Machine tuning parameters. However, APA teaches tuning such configuration parameters were known in the pertinent art, at the time applicant's invention was made, to minimize response time or maximize throughput etc ("modification of multiple configuration parameters such as thread pool size, connection pool size, transaction timeout period, various Java Virtual Machine...parameters," page 1). It would have been

obvious for one having ordinary skill in the art to modify Dumarot and King's disclosed system to incorporate the teachings of APA. The modification would be obvious because one having ordinary skill in the art would be motivated to optimize performance by tuning configuration parameters such as thread pool size (page, lines 19-21) as suggested by APA.

Per claim 6:

APA further discloses:

wherein the measurements of performance of the application comprise at least one of: Overall transactions per second, Average Request Time, HTTP transactions per second, Database connections used, HTTP connections used, Active thread count, Overall throughput, Database throughput, HTTP throughput (i.e. "application performance is typically measured in terms of response time, transactions per second, throughput etc," page 1, lines 13-18).

Per claims 10 and 11, these claims are other versions of the claimed methods discussed in claims 5 and 6, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth the above.

Per claims 16, 17, 21, and 22, they are the system versions of claims 5, 6, 10, and 11, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 5, 6, 10, and 11 above.

Per claims 27, 28, 32, and 33, they are the product versions of claims 5, 6, 10, and 11, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 5, 6, 10, and 11 above.

Per claims 38, 39, 43, and 44, they are the tool versions of claims 5, 6, 10, and 11, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 5, 6, 10, and 11 above.

***Response to Arguments***

12. Applicant's arguments filed on 12/5/2008 have been fully considered but they are not persuasive.

13. The applicant states that: Dumarot does not disclose interface displays that emphasize the importance of a particular parameter over another parameter. King discloses visual elements of a graphical user interface that are enabled for access by a user in a specific order. King only discloses a static determination of the tabbing order by the application developer. King does not disclose arranging the tabbing order in order to emphasize the importance of a particular parameter over another parameter.

In response, Dumarot discloses an optimizer program containing a graphical user interface used to specify settings or provide information to the user (col. 4 lines 48-65) where the optimizer optimizes the setting of various parameters in hardware, operating system software or application software such that the system as a whole runs as efficiently as possible by setting the parameters corresponding to a user's satisfaction (col. 3 lines 25-40). While Dumarot discloses a graphical user interface in the optimizer, King clearly teaches that visual elements of a graphical user interface are generally displayed to a user and accessed by a user in a tabbing order (col. 2 lines 23-40). The only portion in the instant specification that describes the limitation above is: "The order of the tabs 306A-D may be arranged so as to emphasize the importance of particular types of parameters over other (i.e. original spec, page 15, lines 3-9)." The portion further

recites that the tab for “database connection pool size” is emphasized over tabs for other parameters by being the first tab in the sequence of the tab order shown in Fig. 3 (the tab for HTTP values is the next and so on). The importance emphasis is simply based on the sequence of the tab order (by placing the Database in the first tab 306). King explicitly states that the tabbing order is also defined as the sequence in which visual elements of a user interface for an application will receive focus when the tab key is pressed by the user (col. 2 lines 23-40). King's tabbing order allows the visual elements of the graphical user interface identified by receiving focus (highlighted) to be automatically **scanned in the sequential order defined by the tabbing order** (col. 5 lines 15-40). The first visual element is displayed with focus (highlight) being identified as the first visual element in the tabbing order in the “sequential order of visual elements provided by the tabbing order that includes at least a first visual element, a second visual element and a last visual element (col. 5 lines 45-60). Therefore, the importance of the first visual element in the tabbing order is emphasized by being the first tab in the sequence. Accordingly, by arranging the orders of the tabs in the graphical user interface taught by King, the most important particular parameter setting in Dumarot can be emphasized by being placed in the first tab in the graphical user interface of the optimizer. Therefore, applicant's argument above is not persuasive.

2) The applicant states that the dependent claims also patentable because King, Dumarot and APA do not disclose interface displays that emphasize the importance of a particular parameter over another parameter. In response, this has been addressed above.

3) The applicant states that as King does not disclose the interface displays that emphasize importance of a particular parameter over another parameter, the combination of

claims 1-28 of copending application with King does not make claims 1-44 of the present application obvious.

In response, the rejection in view of King has been maintained, therefore, the argument that the combination is not obvious is considered moot. Accordingly, the double patenting rejections are also maintained.

### ***Conclusion***

**14. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to INSUN KANG whose telephone number is (571)272-3724. The examiner can normally be reached on M-R 7:30-6 PM.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis A. Bullock, Jr. can be reached on 571-272-3759. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Insun Kang/  
Examiner, Art Unit 2193